

DRAFT #1

October 17, 2006

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING, REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 411, to repeal and recreate NR 411 relating to the indirect source program and affecting small business that construct permitted indirect source facilities or manage heavy duty diesel truck fleets that travel to/from permitted indirect source facilities

AM-XX-06

Summary Prepared by the Department of Natural Resources

1. **Statute interpreted:** Section 285.11(6), Stats., The State Implementation Plan developed under s. 285.11(6), Stats., is revised. Section 285.13(4), Stats., subchapter IV of ch. 285, Stats.,
2. **Statutory authority:** Section 285.11(6), Stats., The State Implementation Plan developed under s. 285.11(6), Stats., is revised. Section 285.13(4), Stats., subchapter IV of ch. 285, Stats.,
3. **Explanation of agency authority:** Under ch. NR 411, Wis. Adm. Code, DNR has the authority to regulate indirect sources by requiring construction and operation permits for such sources. Since mobile source activity occurs at or near the indirect sources, and since it is that activity, and not the indirect source per se, that directly causes emissions, it can be said that DNR has authority to address the mobile source activity that is causing the emissions coming from – or associated with -- an indirect source.

Indirect sources, by their nature, attract mobile source activity -- but for the indirect source being there, the mobile sources associated with it would not be traveling through an area to get there. While traditionally we have been thinking of indirect sources and the associated emissions from a relatively confined geographical standpoint, and while the definition of an indirect source speaks of “emissions of any air contaminant, at or on the indirect source itself” (NR 400.02(85)), it is clear that the DNR has authority to regulate mobile sources associated with an indirect source. Moreover, the inclusion of “highways and roads” in both the definition of an indirect source (NR 400.02(85)), and in the rule itself (NR 411.04(2)(b)), lends strong support to a conclusion that the DNR has authority to regulate mobile source activity on an indirect source.
4. **Related statute or rule:** NR 406, NR 407, NR445
5. **Plain language analysis:** The proposed rule revision will eliminate carbon monoxide as the primary pollutant of concern and focus strategies to reduce diesel exhaust, volatile organic compounds (VOC), oxides of Nitrogen (NOx), and particulate matter from facilities such as warehouses and truck stops that accommodate large number of diesel

powered vehicles. In addition, control measures are proposed for off-road equipment used to construct new indirect sources and some roadways. Roadway capacity expansions that meet permit criteria are required to install to adaptive signal controls within the corridor to optimize vehicle flow through a given road. Lastly, new indirect sources with proposed parking lots exceeding permit thresholds are required to develop transportation demand management plans to promote alternatives to single occupancy vehicle travel.

6. Summary of, and comparison with, existing or proposed federal regulation: Not Applicable

7. Comparison with rules in adjacent states: Illinois, Iowa, Minnesota, and Michigan do not have similar rules. Illinois has adopted rules prohibiting diesel-powered vehicles with a gross vehicle weight of more than 8,000 pounds from stationary idling longer than 10 minutes per hour in nine state counties, including the City of Chicago. While waiting to weigh, load or unload cargo or freight, truckers would have their idling limited to no more than 30 minutes per hour, unless they are in a line of vehicles that regularly and periodically moves forward. Violators would face a fine of \$50 for a first offense. A second or subsequent offense within any 12-month period would result in a \$150 fine. The law allows certain exemptions.

8. Summary of factual data and analytical methodologies:

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

10. Effect on small business:

11. Agency contact person: Mike Friedlander

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Mike Friedlander

Department of Natural Resources

Bureau of Air Management

PO Box 7921

Madison WI 53707

Fax: (608) 267-0560

michael.friedlander@dnr.state.wi.us

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and submission deadline are to be determined.

The consent of the Attorney General and the Revisor of Statutes will be requested for the incorporation by reference of new test methods in ch. NR 484.

SECTION 1.

NR 411.01 Applicability; purpose. (1) **APPLICABILITY.** This chapter applies to all indirect sources which are required under s. 285.60, Stats., to obtain construction permits or operation permits. In accordance with s. 285.60(6), Stats., this chapter exempts indirect sources of certain sizes and types from the requirement to obtain a permit.

(2) **PURPOSE.** This chapter is adopted under s. 285.11, Stats. The primary pollutants of concern for purposes of this chapter ~~is carbon monoxide~~ are volatile organic compounds (VOC), oxides of Nitrogen (NOx), particulate matter (PM 2.5), and diesel exhaust. The primary purpose of this chapter is to control ~~carbon monoxide emissions~~ volatile organic compounds (VOC), oxides of Nitrogen (NOx), particulate matter (PM 2.5), and diesel exhaust from indirect sources by specifying requirements for indirect source construction permits and operation permits.

NR 411.02 Definitions. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(1) "Adaptive signal control" means systems that coordinate control of traffic signals across a signal network, adjusting the lengths of signal phases based on prevailing traffic conditions.

(2) "Associated parking area" means a parking facility owned or operated in conjunction with an indirect source.

(3) "Alternate mode" means any mode of commute transportation other than the single occupancy motor vehicle.

(4) "Approvable travel reduction plan" means a plan submitted by a major employer that meets the requirements as set forth in this rule.

(5) "Carpool" or "vanpool" means two or more persons traveling in a light duty vehicle (car, truck or van) to or from work.

(6) "Commute trip" means a trip taken by an employee to or from work.

(7) "Commuter matching service" means any system, whether it uses computer or manual methods, which assists in matching employees for the purpose of sharing rides to reduce drive alone travel.

~~(3)~~ (8) "Construction" means any building, paving, erecting or related site preparation activity, including any demolition, site clearance, grading, dredging or landfilling at any location on the property on which an indirect source would be located.

(9) "Employer" means a sole proprietor, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual entity, either public or private, that employs workers.

(10) "Full-time equivalent (FTE) employees" means the number of employees an employer would have if the employer's work needs were satisfied by employees working forty-hour work weeks. The number of full time equivalent employees for any employer is calculated by dividing the total number of annual work hours paid by the employer, by two thousand eighty work hours in a year.

(10a) "Heavy-duty vehicle" means a motor vehicle having a manufacturer's maximum gross vehicle weight rating (GVWR) greater than 8,000 pounds, except passenger cars.

~~(4)~~ (11) "Highway project" means all or a portion of a proposed new or modified section of highway. If an environmental impact document is prepared, "highway project" means the portion of the highway to which that document applies.

~~(5)~~ (12) "Intersection boundary" means a line surrounding an intersection which is drawn to include the peak hour queue for each intersection approach and the area on either side of each such queue within a distance of one queue length, measured perpendicular to the queue.

~~(6) "Major source" means any indirect stationary source which causes the emission or has the potential to cause the emission of 25 tons or more per year on site of carbon monoxide.~~

(12m) "Low NOx Rebuild Kit" means an engine manufacturer's software and/or minor hardware upgrade that results in lower emissions of oxides of nitrogen (NOx) when installed on the engine control module of heavy-duty diesel engines requiring such kits. Such engines are identified in plans implementing a Low NOx Rebuild Program under the Consent Decrees with the United States Environmental Protection Agency.

(12n) "Low NOx Rebuild Engine" means a 1993 through 1998 model year heavy-duty diesel engine for which a Low NOx Rebuild Kit must be available for installation.

(12o) "Low NOx Rebuild Engine Manufacturer" means an engine manufacturer that was required to develop Low NOx Rebuild Kits under (12m).

(13) "Mode" means the type of conveyance used in transportation including single occupancy motor vehicle, rideshare vehicle (carpool or vanpool), transit, bicycle and walking.

~~(7)~~ (14) "Modified road or highway segment" means a road or highway segment which will have at least part of its roadway surface located on land currently used for roadway. In addition, a proposed road, ramp or lane which will carry traffic in only one direction shall be considered a modified road or highway segment if it will be less than one half mile in length and will not create a new traffic movement.

~~(8) "Modified intersection" means an intersection that will have at least part of its new roadway surface within the new intersection boundary on land that is currently used for roadway within the boundary of an existing intersection.~~

(15) "Motor vehicle" means any vehicle propelled by a motor including car, van, bus, motorcycle and all other motorized vehicles.

~~(9)~~ (16) "New road or highway segment" means a road or highway segment which will have its roadway surface located entirely on land not currently used for roadway and which is not a modified road or highway segment.

(17) "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

(18) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine, fifty horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a nonroad engine of sixty-five horsepower or less and that are not used in any construction program or project.

(18a) "Owner" has the same meaning as (Wisconsin Reference Needed).

~~(10)~~(19) "Parking capacity" means the maximum number of motor vehicles which a parking lot or structure is designed to hold, based on an allotment of not more than 350 square feet of stall and aisle area per vehicle.

~~(11) "Peak hour queue" means the line of waiting motor vehicles produced during the highest hour of traffic volume measured, estimated or projected for a given year, at a location where traffic flow is restricted by controlled or uncontrolled conditions.~~

~~(12)~~(20) "Peak hour volume" means the highest one-hour traffic volume in a calendar year.

~~(13) "Potential receptor" means any doorway, window or other such opening associated with an existing structure. In the absence of an existing structure, potential receptors may be located at the building setback line or at the outer edge of roadway right of ways.~~

~~(14) "Queue" means a line of idling motor vehicles.~~

(21) "Person" means any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

(21a) (10) "Registered outside of Wisconsin" means any of the following:

(A) A heavy-duty diesel-powered vehicle operating in Wisconsin under the terms of Interstate Reciprocity Agreements as authorized by (Wisconsin reference needed) and which belongs to a fleet that is not based in Wisconsin;

(B) A heavy-duty diesel-powered vehicle operating in Wisconsin under the terms of any other apportioned registration, reciprocity, or bilateral prorate registration agreement between Wisconsin and other jurisdictions and which belongs to a fleet that is not based in Wisconsin; or

(C) A heavy-duty diesel-powered vehicle operating in Wisconsin under a short-term vehicle registration or permit of 90 days or less.

(22) "Ridesharing" means transportation of more than one person for commute purposes, in a motor vehicle, with or without the assistance of a commuter matching service.

~~(15)~~(23) "Road or highway segment" means a continuous length of road or highway outside of intersection boundaries. If the road or highway crosses the boundary between a metropolitan county and a non-metropolitan county, the portion in each county is a separate road or highway segment.

~~(16)~~(24) "Traffic volume" means the number of motor vehicles that pass a particular point on a road or highway during a specific time period.

(25) "Transit" means a bus or other public conveyance system.

(26) "Transportation coordinator" means a person designated by an employer, property manager or transportation management association as the lead person in developing and implementing a travel reduction plan.

(27) "Travel reduction plan" means a written report outlining travel reduction measures which will be submitted annually by each major employer.

(28) "Travel reduction program" means a program, implementing a travel reduction plan by an employer, designed to achieve a predetermined level of travel reduction through various incentives and disincentives.

(29) "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

(30) "Vanpool" see "Carpool".

(31) "Vehicle occupancy" means the number of occupants in a motor vehicle including the driver.

(32) "Vehicle miles traveled (VMT)" means the number of miles traveled by a motor vehicle for commute trips.

(33) "Work site" means a building or any grouping of buildings in the State of Wisconsin which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way, and which are owned or operated by the same employer.

NR 411.03 Construction permit requirements. No person may commence construction, relocation or modification of an indirect source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under this chapter.

NR 411.04 Exemptions from indirect source permit requirements. (1) INDIRECT SOURCE EXEMPTIONS. Pursuant to s. 285.63(4)(a), Stats., indirect sources are exempt from s. 285.63(2)(a) and (b) and (3)(a), Stats.

(2) SOURCES EXEMPT FROM CONSTRUCTION PERMITS. The following categories of indirect sources are exempt from the requirement to obtain a construction permit unless the source is required to obtain a permit because of incremental growth as determined under sub. (4):

(a) *Indirect sources with associated parking.* No permit is required if an indirect source with associated parking will be any of the following:

1. A new indirect source located in a metropolitan county with a parking capacity of less than 1000 motor vehicles in its associated parking areas.

2. A modified indirect source located in a metropolitan county with a parking capacity increase of less than 1000 motor vehicles in its associated parking areas.

3. A new indirect source located outside the metropolitan counties with a parking capacity of less than 1500 motor vehicles in its associated parking areas.

4. A modified indirect source located outside the metropolitan counties with a parking capacity increase of less than 1500 motor vehicles in its associated parking areas.

(b) Indirect sources with significant heavy duty diesel traffic. A new indirect source with less than 20,000 square feet gross floor area and less than 50 daily heavy duty diesel truck trips

~~(b)(c)~~ Road and highway projects. For road and highway projects located outside the metropolitan counties, no permit is required for any new road or highway segment which will carry less than 4 lanes of traffic, for any new intersection each leg of which will carry less than 4 lanes of traffic, or for any modified road or highway segment or modified intersection which will have less than 2 additional lanes of traffic. In addition, no permit is required for any road or highway project which will meet all of the following criteria for location and anticipated traffic volumes within 10 years after construction or modification:

1. For any new road or highway segment or new intersection leg located in a metropolitan county, a peak hour volume of less than 1200 motor vehicles per hour.

2. For any modified road or highway segment located in a metropolitan county, an increase in the peak hour volume of less than 1200 motor vehicles per hour.

3. For any new road or highway segment or new intersection leg located outside the metropolitan counties, a peak hour volume of less than 1800 motor vehicles per hour.

4. For any modified road or highway segment located outside the metropolitan counties, an increase in the peak hour volume of less than 1800 motor vehicles per hour.

5. For any new road or highway segment, modified road or highway segment in Wisconsin that is less than 1 mile in total length.

~~5. Where there is a shift in one or more of the intersection approach legs, one of the following:~~

~~a. A maximum shift in the nearest roadway edge of less than 12 feet toward any potential receptor location within the new intersection boundary for any modified intersection.~~

~~b. Where the maximum shift in the nearest roadway edge toward any potential receptor location is 12 or more feet, and each new road or highway segment has no more than 2 approach lanes, not including exclusive turning lanes, and any potential receptor is located at more than 25 feet from the nearest proposed roadway edge, a peak hour traffic volume on each approach of less than 1800 motor vehicles per hour.~~

~~(c) Application of screening technique.~~ If a road or highway project is not exempt from permit requirements under par. (b), a person may apply for a permit exemption by submitting the results of an approved screening analysis based on a line source dispersion model. The screening technique used shall be reviewed and approved by the department and the analysis shall use receptor locations which have been approved by the department for each project as adequate to show the maximum potential ambient concentrations of carbon monoxide to which the public may be exposed. If the screening analysis results indicate that no receptor location will be exposed to more than 75% of any ambient air quality standard for carbon monoxide, no permit is required.

(6) In cases where a contractor does not have access to sufficient ULSD fuel, the Bureau of Air Management must authorize the contractors to use diesel fuel for its nonroad vehicles that has a sulfur content of no more than 30 ppm. These exceptions must be renewed every six months in writing, and may

not extend beyond October 1, 2009. If sufficient diesel fuel with a sulfur content of no more than 30 ppm is not available, and the contractor makes a good faith effort to use available quantities of ultra low or low sulfur fuel in their nonroad vehicles, they may be exempt from either requirement.

(3) SOURCES EXEMPT FROM OPERATION PERMITS. The following categories of indirect sources are exempt from the requirement to obtain an operation permit:

(a) *Existing sources.* All indirect sources on which construction or modification commenced on or prior to ~~November 15, 1992~~ January 31, 2007, unless the department deems an operation permit is necessary to ensure that air quality standards are maintained in accordance with ch. 285, Stats., and chs. NR 400 to 499.

~~(b) Road and highway projects. All indirect sources which are road or highway projects.~~

~~(c)~~(b) *Indirect sources with associated parking.* Any indirect source that is exempt from the requirement to obtain a construction permit in accordance with sub. (2).

(4) INCREMENTAL GROWTH. If a person constructs or modifies an indirect source in increments which individually are exempt from the requirement for a permit under this section, the person is required to obtain a construction permit for the source prior to commencing construction or modification of that increment which, in combination with the other increments occurring since July 1, 1975, or since the date of the last indirect source permit or plan approval issued to the source, whichever is later, will cause the applicable permit exemption criterion specified in sub. (2) to be exceeded.

NR 411.05 Scope of permit exemption for associated direct sources.

Exemption or the granting of an exemption under this chapter from the requirement to obtain an indirect source permit does not exempt any person from meeting, for any direct stationary source associated with the indirect source, the emission limitation requirements of chs. NR 400 to 499, the ambient air quality requirements of ch. NR 404, the reporting requirements of ch. NR 438, the requirement to obtain a construction permit under ch. NR 406 or an operation permit under ch. NR 407, or the requirements of any other provision of law.

NR 411.06 Application requirements. (1) Applications for the indirect source construction permits or operation permits shall be submitted on forms which are available from the department at its Madison headquarters.

Note: The address of the Madison headquarters is Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707, Attention: ~~Modeling~~ Regional Pollutant and Mobile Source Section.

(2) In addition to the application form, the following information is required in order for the application to be complete:

(a) A to-scale map detailing the project site ~~and receptor locations.~~

~~(b) Traffic volume counts for peak one hour and peak 8 hour periods. These traffic counts shall include 2 estimates, one for the first year of operation following construction and one for the construction year plus 10 years.~~

(b) The non-road equipment number, type, make, and contractor/sub-contractor name, the emission control device make, model and EPA verification number

~~(c) A computer disk containing the input files used in the appropriate emissions and air dispersion models.~~

(c) Source to provide ultra low sulfur diesel to non-road equipment, if applicable

(d) Transportation Demand Management Plan, if applicable

(e) Implementation plan for adaptive signal control for transportation corridor with capacity expansion, if applicable

NR 411.07 Transportation Demand Management Plans for Employers (1)

Employers subject to the indirect source permit program based on parking space thresholds are required to submit the following information to the Bureau of Air Management as an operation permit condition:

(A) Provide each regular employee with information on alternate mode options and travel reduction measures including, but limited to: bus routes and schedules, a ride share program, parking cash-out, and bicycle routes. This information shall also be provided to new employees at the time of hiring.

(B) Participate in a survey and reporting effort, the results of this survey shall form a baseline against which attainment of the targets in subsection e of this section shall be measured as follows:

1. The baseline for participation in alternative modes of transportation shall be based on the total number of employees;
2. The baseline for VMT shall be the average VMT per employee for employees not residing on the work site.

(C) Prepare and submit a travel reduction plan for submittal to the Wisconsin Department of Natural Resources, Bureau of Air Management staff. The plan shall contain the following elements:

The name of the designated Transportation Coordinator;

A description of employee information programs and other travel reduction measures which have been completed to date or during the previous year;

A description of travel reduction measures to be undertaken by the indirect source permittee in the future eighteen months of the plan. The following measures may be included:

- a. commuter matching service, in addition to or coordinated with Wisconsin Department of Transportation's RideShare program, to facilitate employee ridesharing work trips,
- b. Provision of vans or vanpooling,
- c. Subsidized carpooling or vanpooling which may include payment for fuel, insurance or parking,
- d. Use of company vehicles for carpooling,
- e. Provision of preferential parking for carpool, vanpool or hybrid vehicle users which may include close-in parking or covered parking facilities,
- f. Subsidized bus fares,
- g. Construction of covered benches and shelters for transit, carpool, and vanpool users,
- h. Cooperation with local jurisdictions to construct walkways or bicycle routes to the work site.
- i. Provision of bicycle racks, lockers and showers for employees who walk or bicycle to and from work.

- j. Provision of a special information center where information on alternate modes and other travel reduction measures will be available.
- k. Establishment of a work-at-home program, flexible scheduling, or compressed work weeks, full or part-time, for employees.
- l. Establishment of a program of adjusted work hours which may include compressed work weeks and employee-selected starting and stopping hours. Work hour adjustments should not interfere with or discourage the use of ridesharing and transit.
- m. Establishment of a program of parking incentives and disincentives; such as a fee for parking and/or a "rebate" for employees who do not use the parking facility, such as parking cash out.
- n. Implementation of other measures designed to reduce commute trips such as emergency taxi services.
- o. Location specific mortgage programs to encourage employees to live in close proximity to worksite
- p. An approvable travel reduction plan shall meet all of the following criteria:
 - 1. The plan shall designate a transportation coordinator;
 - 2. The plan shall describe a mechanism for regular distribution of alternate mode transportation information to employees;
 - 3. For employers who in any annual period, meet or exceed annual targets for travel reduction, the plan shall accurately and completely describe current and planned travel reduction measures;
 - 4. For employers who, in any annual period, fall below the regional targets for travel reduction, the plan shall include commitments to implement:
 - i. At least two specific travel reduction measures in the first eighteen months of the program.
 - ii. At least three specific Alternate Modes incentives programs in the second eighteen months of the program;
- q. Indirect Source Permittees Employers shall implement all travel reduction measures considered necessary to attain the following target employee participation in alternate modes or commuter trip VMT reductions per regulated work site.
 - 1. Three percent of the total employee pool in the first year of the program;

2. Four percent of the total employee pool in the second year;
3. Five percent of the total employee pool in the third year of the regional program.

Variances.

The permittee submits to the department information concerning the conditions or special circumstances which demonstrates, to the department's satisfaction, that the applicable Transportation Demand Management requirements from which variance is sought are technologically or economically infeasible. In addition, the permittee shall submit a proposed schedule which demonstrates reasonable further progress and contains a date for final compliance as soon as practicable.

a. Requests for revisions shall be signed by the principle executive officer; partner; sole proprietor; or a duly authorized representative, as appropriate.

b. Requests shall contain other relevant information as required by the department.

(1) The department, in acting upon any request for a revision under this subsection, shall:

A. Act on requests for revisions within 3 months of the filing of a completed request.

B. State in writing the reasons for denying, granting, or for granting in modified form any request.

c. The department may, after notice and opportunity for hearing, revoke or modify any revision when:

(1) Any term or condition of the revision has been violated;

(2) The permittee did not act in good faith in demonstrating the technological or economic infeasibility of compliance with the general indirect source air permit requirements or in submitting other relevant information in support of the revision request.

NR 411.07 Construction Requirements for Indirect Source Permits (1) ~~The reduction of emissions of Carbon Monoxide (CO), Hydrocarbons (HC), Nitrogen oxides (NOx), and Particulate Matter (PM) will be accomplished by installing Retrofit Emission Control Devices and by using cleaner burning diesel fuels.~~

(2) *Requirements* (a) ULSD. All contractor and Sub-contractor diesel powered equipment with engine horsepower (HP) ratings of 50 HP and above, that are on the project for or are assigned to the contract shall be prohibited from using diesel fuel that is above 15 parts per million (ppm) sulfur content) at any time.

The ULSD fuel shall conform to American Society for Testing and Materials (ASTM) D-975 diesel with the following additional specifications:

- ASTM D-5453 15 ppm Sulfur max.
- ASTM D-6078 Lubricity (SBOCLE) 3100 g min.
- ASTM D-613 Cetane 45 min

(b) Retrofit. Diesel powered equipment that is on the project site for fourteen consecutive days shall be retrofitted with Emissions Control Devices and use Ultra Low Sulfur Diesel fuel (ULSD), (15 ppm sulfur content or less)

The Retrofit Emission Control Devices shall consist of oxidation catalysts, or similar retrofit equipment control technology that (1) is included on the Environmental Protection Agency (EPA) Verified Retrofit Technology List (www.epa.gov/otaq/retrofit/retroverifiedlist.html) and (2) is verified by EPA or certified by the manufacturer via letter, to provide a minimum emissions reduction of 20% PM10, 40% CO, and 50% HC when used with ULSD diesel fuel.

The Retrofit Emission Control Device requirement applies unless the equipment is either EPA Tier 2 Rule compliant or meets the horsepower/ model year defined in the table below:

<u>Horsepower Range</u>	<u>Model Year (or newer)</u>
50-99	2004
100-299	2003
300-599	2001
600-749	2002
750 and up	2006

(1) Reporting. The permittee will submit monthly summary reports, updating the list of construction equipment, and include certified copies of the diesel fuel delivery slips (for ULSD) for the construction permit time period, noting the type of diesel fuel used with each piece of diesel powered equipment.

(c) Idling. The contractor shall establish truck-staging areas for all diesel powered vehicles that are waiting to load or unload material at the construction permit area. Such zones shall be located where the diesel emissions from the equipment will have a minimum impact on adjacent abutters and sensitive receptors of the general public. Sensitive receptors include, but are not limited to hospitals, schools, residences, motels, hotels, daycare facilities, elderly housing and convalescent facilities. Diesel powered engines shall also be located as far away as possible from fresh air intakes, air conditioners, and windows. Idling of diesel powered equipment shall not be permitted during periods of non-active vehicle use. Diesel powered engines shall not be allowed to idle for more than five consecutive minutes when the equipment is not in use, occupied by an operator, or otherwise in motion, except only as follows:

- When the equipment is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control;
- When it is necessary to operate auxiliary systems installed on the equipment, only when such system operation is necessary to accomplish the intended use of the equipment;
- To bring the equipment to the manufacturer's recommended operating temperature;
- When the outdoor temperature is below twenty (20) degrees Fahrenheit or above eighty (80) degrees Fahrenheit;
- When the equipment is being repaired.

NR 411.08 Heavy Duty Diesel Requirements for Indirect Source Permits

1. Software Upgrade for 1993 through 1998 Model Year Heavy-Duty Trucks. This section applies to Low NOx Rebuild Engines, as defined, operating in the State of Wisconsin that are:

- (a) registered in Wisconsin; or
- (b) registered outside of Wisconsin, as defined, and
- (c) belong to a fleet of heavy duty diesel trucks that are subject to indirect source rule

The complete list of Low NOx Rebuild Engines is:
(PENDING DEVELOPMENT)

2 Standards.

(a) On and after the applicable implementation date, a vehicle propelled by a Low NOx Rebuild Engine must not operate at facilities subject to the indirect source rule without a Low NOx Rebuild Kit installed that meets the following emission requirements:

Insert Software Upgrade Requirements Table Here
Option A (1994 - 1998) Option B (1993 - 1998)
MHDDE HHDDE MHDDE HHDDE

(b) A Low NOx Rebuild Engine Manufacturer's authorized dealers, distributors, repair facilities, and rebuild facilities, must:

- (1) provide upon request and at no added cost a Low NOx Rebuild Kit to the owner or driver of a vehicle with a Low NOx Rebuild Engine, and to any non-affiliated rebuilder or other person; and
- (2) install the Low NOx Rebuild Kit within a reasonable amount of time.
- (3) No person may install on a Low NOx Rebuild Engine any engine software containing electronic control strategies, other than a Low NOx Rebuild Kit.
- (4) Any Low NOx Rebuild Engine Manufacturers' authorized dealers, distributors, repair facilities, or rebuild facilities, refusing to install a Low NOx Rebuild Kit upon request, or failing to install a Low NOx Rebuild Kit within a reasonable amount of time from that request, shall be subject to a civil penalty of \$500 per incident.

(c) Implementation Dates.

RESERVED.

(e) Exemptions.

RESERVED

3. Demonstration of Software Upgrade for 1993 through 1998 Model Year Heavy-Duty Trucks.

(a) Before an indirect source operating permit is issued to an indirect source with significant heavy duty diesel traffic, the owner must demonstrate software upgrades for diesel vehicles by submitting to the Bureau of Air Management the following documents:

- (1) A repair receipt or completed work order which contains the following information:
 - (A) Name, address, and phone number of the facility performing the installation;
 - (B) Name of the person performing the installation;
 - (C) Date of the installation;
 - (D) Description of Low NOx Rebuild Engine, including engine model and engine family number, and Low NOx Rebuild Kit installed.

4. Record Keeping Requirements (a) the owner of a vehicle subject to the requirements of this chapter shall retain the following information to demonstrate installation of Low NOx Rebuild

Kits:

(1) A repair receipt or completed work order which contains the following information:

(A) Name, address, and phone number of the facility performing the installation;

(B) Name of the person performing the installation;

(C) Date of the installation;

(D) Description of Low NOx Rebuild Engine, including engine model and engine family number, and Low NOx Rebuild Kit installed.

NR 411.08(m) Heavy Duty Diesel Requirements for Indirect Source Permits 1
Engine idling restrictions (RESERVED)

NR 411.09 Adaptive Signal Control Requirements for Indirect Source Permits (1) Indirect Source Air Permit Applicants based on road or highway project criteria. Adaptive signal controls must be implemented within 0.5 mile radius of new highways or roadway capacity expansion to optimize vehicle flow through a given road network. (2) Adaptive software will provide continuous optimization of phase duration, cycle length, and offsets in immediate response to real-time traffic flows. (3) Timing. Adaptive signal controls will be installed within 5 year period of operation permit

NR 411.010 Design Requirements for Large Retail Developments (1) Indirect Source Air Permit Applicants subject to requirements based on parking space thresholds are required to submit the following information to the Bureau of Air Management as a construction permit condition:

- a. Construction of covered benches and shelters for transit users, in areas where transit is available.
- b. Coordination with local transit agency to locate transit stops in close proximity to retail facility
- c. Coordination with local jurisdictions to construct walkways or bicycle routes to the proposed retail facility.
- d. Provision of bicycle racks for customers who bicycle.
- e. Pedestrian enhancements, such as pavement markings, that afford customers with designated safety corridors through parking lot areas

~~NR 411.07~~ **NR 411.11 Action on permit applications.** (1)(a) This subsection applies to actions on construction permits for which applications are received on or after September 1, 2000. This section does not apply to actions on applications for construction permits where the source commences construction prior to issuance of a construction permit. This section does

not apply to construction permits which are subject to the notice, comment and hearing provisions of s. 293.43, Stats.

(b) The department shall make a determination under s. 285.61(8), Stats., on a construction permit application within 145 business days of receipt of a complete application, unless compliance with s. 1.11, Stats., requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11, Stats., within one year.

(c) If the department does not make a determination within the time period specified in par. (b), the department may not impose an application fee for the construction permit under s. NR 410.03, and shall refund any application fee submitted with the application.

(2) Upon completion of construction and verification by the department that the indirect source was completed according to plans submitted in the construction permit application and meets s. NR 411.01(1), an operation permit shall be issued by the department to the indirect source.

~~**NR 411.08 Applicable air standards.** Pursuant to s. 285.63(1)(b), Stats., the department shall determine if the indirect source will violate the ambient air quality standards for carbon monoxide given in s. NR 404.04(4).~~

~~**NR 411.09**~~ **NR 411.12 Violations.** Any owner or operator who fails to construct and operate an indirect source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate an indirect source in accordance with conditions imposed by the department under s. 285.65(1) to (4), (8) to (10) and (13), Stats.; any owner or operator who modifies an indirect source in violation of conditions imposed by the department under s. 285.65(1) to (4), (8) to (10) and (13), Stats.; or any owner or operator who commences construction or modification of an indirect source without applying for and receiving a permit as required under this chapter shall be considered in violation of s. 285.60, Stats.

~~**NR 411.10**~~ **NR 411.13 Construction permit or operation permit revision, suspension and revocation.** (1) GROUNDS FOR ACTION. After providing 21 days written notice to the permit holder, the department may revise, suspend or revoke a construction permit or operation permit, part of that permit or the conditions of that permit if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or which causes air pollution.

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation by the permit holder or a deliberate failure to disclose fully all relevant, significant facts when obtaining the permit.

(c) *Department determination.* A determination by the department that the permit be revised to assure compliance with the applicable requirements.

(d) *Request.* A request by the permit holder to revise, suspend or revoke the permit.

(e) *Failure to pay fees.* An intentional failure by the permit holder to pay in full the fees required under ch. NR 410, except the department may not suspend or revoke the permit for failure to pay fees while those fees are being disputed under s. NR 410.04(6).

(f) *Change in requirements.* A change in any applicable requirement or a new applicable requirement.

(g) *Change in air quality standard.* A change in an applicable ambient air quality standard that requires either a temporary or permanent reduction or elimination of the permitted emission.

(h) *Inaccurate permit content.* A material mistake or an inaccurate or unclear statement in the permit.

(2) PROCEDURES AND TIMETABLE FOR ISSUANCE. The department shall use the procedures and timetable listed in ss. 285.61 and 285.62(2) to (9), Stats., to revise permits covered under this section.

~~NR 411.11~~**NR 411.14** **Permit duration periods.** 1) CONSTRUCTION PERMIT. Approval to construct or modify an indirect source shall become invalid 18 months after the date when a construction permit was issued by the department unless the permit specifies otherwise. The department may only extend this duration period for up to 18 additional months upon written request showing that an extension is justified unless the permit specifies otherwise.

(2) OPERATION PERMIT. The term of the indirect source operation permit is 5 years unless the department deems a shorter time limit necessary to ensure that air quality standards are maintained in accordance with chs. NR 400 to 499 and ch. 285, Stats.

~~NR 411.12~~**NR 411.15** **Operation permit renewal.** Renewal of an indirect source operation permit shall be in accordance with s. 285.66(3), Stats.

[Rule orders end with the following two or three standard SECTIONS, the first of which is optional.]

SECTION X. INITIAL APPLICABILITY. This rule first applies to ... on the effective date of this rule.

[Optional]

SECTION Y. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION Z. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin

Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)